

FIRST DIVISION

[A.C. No. 10540 [Formerly CBD Case No. 07-2105], November 28, 2019]

**SPOUSES ELMER AND MILA SORIANO, COMPLAINANTS, VS.
ATTY. GERVACIO B. ORTIZ, JR. AND ATTY. ROBERTO B. ARCA,
RESPONDENTS.**

DECISION

PERALTA, C.J.:

Before the Court is a Complaint^[1] filed by complainants, the spouses Elmer and Mila Soriano (*the Spouses Soriano*), on October 23, 2007 against respondents, Atty. Gervacio B. Ortiz, Jr. and Atty. Roberto B. Arca, for allegedly notarizing documents without the presence of the complainants in violation of the Notarial Law.

The antecedent facts are as follows:

In their complaint, the Spouses Soriano alleged that they are the registered owners of a parcel of land located at Barrio Bagbagan, City of Muntinlupa, covered by Transfer Certificate of Title (TCT) No. 162098. According to them, they intended on selling the property, to one of their sisters. In order to assess the amount of tax that will be due from such sale, Marciana Reyes, sister of complainant Mila Soriano, entrusted the owner's copy of the title to a certain Susan Manito sometime in February 2006. But the title and other pertinent documents were never returned to Reyes. Subsequently, Reyes came to know from persons close to a certain Gaila Montero that the title was mortgaged to the latter in the amount of P260,000.00. At first, Reyes was afraid to tell the Spouses Soriano about her discovery, but when she could no longer solve the problem herself, she had no choice but to inform them of the same. The Spouses Soriano immediately went to the house of Montero, introduced themselves to her, and tried to secure a copy of the alleged mortgage contract. Montero told them to come back the next day. Upon their return, the Spouses Soriano were surprised to be confronted by persons claiming to be from the Criminal Investigation and Detection Group (CIDG) who wanted to take them to Camp Crame, Quezon City but they refused to go.^[2]

Instead, the Spouses Soriano went to the Register of Deeds (RD) of Muntinlupa City where they discovered that a Deed of Mortgage dated March 8, 2006 was registered and annotated at the back of their title under Entry No. 64418. Based on said deed, they appear to be the mortgagors of the subject property covering a loan obtained from Montero in the amount of P60,000.00. They, however, assail the authenticity of the Deed of Mortgage. They deny the signatures appearing thereon for being clearly different from their actual signatures. They also deny having appeared before the notary public listed thereon in the persons of respondents Ortiz and Arca. Neither have they authorized any other person to mortgage the subject property on their behalf. According to the Spouses Soriano, moreover, the Community Tax Certificates

(CTC) indicated in the deed do not belong to them for in the acknowledgment portion thereof, it was stated that their certificates were secured from the City of Manila when they are residents of Molino, Cavite.^[3]

On August 16, 2006, the Spouses Soriano went back to the RD of Muntinlupa City and to their surprise, a new annotation appeared on their title. This time, a document entitled Supplemental to the Deed of Mortgage was registered under Entry No. 64467 and was notarized by respondent Arca. In the said document, it again appears that the Spouses Soriano secured an additional P200,000.00 from Montero using the same title as collateral. As with the first annotation, the Spouses Soriano deny having mortgaged the subject property to Montero for an additional loan, having signed the said Supplemental, and having appeared before respondent Arca.^[4] Consequently, they filed a civil case for the recovery of the owner's duplicate copy of TCT and nullification of mortgages. They also caused the annotation of the Notice of *Lis Pendens* on the title under Entry No. 64808 and inscribed on August 29, 2006.^[5]

By way of defense, respondent Ortiz denied having prepared and notarized the Deed of Mortgage between the Spouses Soriano and Montero. He also maintained that the parties never appeared before him on March 8, 2006. According to Ortiz, he was conferred a notarial commission in Manila for two (2) years beginning on the year 2004 and ending on December 31, 2005. In the early part of 2005, however, Ortiz received information that his signature was being forged. For this reason, he made a written request to the Executive Judge of Manila for the pre-termination of his notarial commission, which was granted on June 4, 2005. Thus, for all legal intents and purposes, his notarial commission for the City of Manila ended on June 4, 2005. Ortiz, subsequently, applied for another notarial commission, this time, at the City of Makati which was granted from June 21, 2005 to December 31, 2006. From this, it is clear that on March 8, 2006, the date of the execution of the Deed of Mortgage, Ortiz was no longer commissioned as notary public in the City of Manila.^[6]

For his part, respondent Arca did not deny notarizing the subject documents and even admitted the same. Instead, he refuted the claims of the Spouses Soriano that they never appeared before him and that the signatures on the documents do not belong to them. For Arca, these claims are self serving and must not be sustained. He also maintained that since the Spouses Soriano sought the revocation of the mortgages, they cannot thereafter assert the nullity thereof since revocation implies that the mortgages are valid. Finally, Arca insisted that it is the Executive Judge and not the Commission on Bar Discipline that has jurisdiction over the case, because the Spouses Soriano were seeking to discipline him as a notary public and not as a lawyer.^[7]

In a Report^[8] dated September 21, 2010, the Investigating Commissioner of the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) recommended that the complaint against respondent Ortiz be dismissed for insufficiency of evidence. But with respect to respondent Arca, it was recommended that he be suspended from the practice of law for a period of one (1) year, that his notarial commission be revoked, and that he be disqualified from reappointment as notary public for a period of two (2) years.^[9]

In a Resolution^[10] dated December 29, 2012, the Board of Governors (*BOG*) of the IBP approved, with modification, the Report and Recommendation of the Investigating Commissioner. With respect to respondent Ortiz, the BOG dismissed the complaint against him. With respect to respondent Arca, the BOG resolved to suspend him from the practice of law for a period of six (6) months, revoke his notarial commission, if commissioned, and disqualify him from reappointment as notary public for a period of two (2) years.

In another Resolution^[11] dated March 22, 2014, however, the BOG affirmed, with modification, its earlier resolution, and reverted back to the recommendation of the Investigating Commissioner. Thus, with respect to respondent Ortiz, the BOG resolved to dismiss the complaint against him. With respect to respondent Arca, the BOG resolved to suspend him from the practice of law for a period of one (1) year, revoke his notarial commission, if commissioned, and disqualify him from reappointment as notary public for a period of two (2) years.

In his Petition for Review, respondent Arca questions why the BOG, after modifying the recommendation of the Investigating Commissioner to suspend him from the practice of law from one (1) year to six (6) months, reverted back to the one (1) year-suspension that the Investigating Commissioner originally recommended without citing any reason for its change of mind. Ultimately, Arca seeks the Court's compassion considering that the instant case is his first offense. Citing several jurisprudential teachings, he claims that the penalty of suspension from the practice of law for a period of one (1) year and disqualification from reappointment as notary public for a period of two (2) years is inappropriate since his omission relates to his actuations as notary public and not as a lawyer. Instead, he believes that the penalty of suspension from the practice of law for a period of three (3) months and disqualification from reappointment as notary public for a period of three (3) years is more in line with his infraction.^[12]

The Court's Ruling

In view of the circumstances of the instant case, the Court finds no cogent reason to reverse the findings of the BOG.

With respect to respondent Ortiz, the Court sustains the dismissal of the complaint against him for insufficiency of evidence. As the Investigating Commissioner found, it appears that Ortiz had no participation in the execution of the questioned documents as he immediately sought the pre-termination of his notarial commission upon his discovery of forgery. He exercised earnest efforts to protect the sanctity of his notarized documents. Indeed, the fact remains that on the date of the execution of the Deed of Mortgage, Ortiz was no longer commissioned as notary public in the City of Manila.

As for respondent Arca, the Court likewise sustains the BOG's resolution to suspend him from the practice of law for a period of one (1) year, revoke his notarial commission, if commissioned, and disqualify him from reappointment as notary public for a period of two (2) years. In his petition, Arca argues that the case of *Tabas v. Atty. Mangibin*^[13] used by the Investigating Commissioner as basis for his penalty is inapplicable to his case. Instead, he contends that what should govern are Our rulings in *Soriano v. Atty. Basco*^[14] where we merely imposed the penalty of